

Apr 24, 2023

SEAN F. McAVOY, CLERK

UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF WASHINGTON

UNITED STATES OF AMERICA,

Plaintiff,

v.

ZEBULION IAN LISTER,

Defendant.

No. 1:22-CR-02006-MKD-1

ORDER DENYING DEFENDANT'S
MOTION TO REOPEN
DETENTION HEARING

ECF No. 67

On Friday, April 14, 2023, the Court conducted a hearing on Defendant's Motion to Reopen Detention Hearing (ECF No. 67). Defendant was represented by Assistant Federal Defender Nick Mirr. Assistant United States Attorney Todd Swensen represented the United States.

The Court has considered the Indictment (ECF No. 1), Defendant's Motion to Reopen Detention Hearing (ECF No. 67), the Pretrial Services Report (ECF No. 60), and the arguments of counsel.

On February 27, 2023, the Court held a detention hearing and granted the United States' Motion for Detention (ECF No. 59). ECF No. 64. Defendant now indicates that a bed date is available at The Center in Wenatchee and requests the Court grant release for inpatient treatment. ECF No. 67. Counsel has arranged for Defendant's parents to pick Defendant up at the Yakima County Jail on Thursday,

1 April 20, 2023, and transport Defendant directly to inpatient treatment at The
2 Center. *Id.*

3 The issue of pretrial release is governed by 18 U.S.C. § 3142. Under that
4 statute, a judicial officer shall order that a defendant awaiting trial be (1) “released
5 on personal recognizance or upon execution of an unsecured appearance bond,” (2)
6 “released on a condition or combination of conditions,” or (3) detained pending
7 trial. 18 U.S.C. § 3142(a). The judicial officer shall conduct a detention hearing to
8 determine “whether any condition or combination of conditions set forth in [§
9 3142(c)] will reasonably assure the appearance of such person as required and the
10 safety of any other person and the community.” 18 U.S.C. § 3142(f). The judicial
11 officer shall order the defendant be detained if the United States shows either (1)
12 by a preponderance of the evidence that the defendant will not appear as required,
13 or (2) by clear and convincing evidence that the defendant poses a risk to the safety
14 of any other person and the community. *Id.*; *United States v. Gebro*, 948 F.2d
15 1118, 1121 (9th Cir. 1991) (“On a motion for pretrial detention, the government
16 bears the burden of showing by a preponderance of the evidence that the defendant
17 poses a flight risk, and by clear and convincing evidence that the defendant poses a
18 danger to the community”).

19 Pursuant to 18 U.S.C. § 3142(g), this Court has taken into account the nature
20 and circumstances of the offense charged, the weight of the evidence against the

1 Defendant, as well as Defendant's history and characteristics, including character,
2 physical and mental condition, family ties, employment, financial resources, length
3 of residence in the community, community ties, past conduct and history relating
4 to alcohol and drug abuse, and also criminal history, record concerning appearance
5 at court proceedings, whether Defendant was under supervision at the time of the
6 alleged offense, and the nature and seriousness of the danger to the community
7 posed by Defendant's release.

8 The United States contended that if released, Defendant would present a risk
9 of danger to the safety of the community. Defendant, through counsel, contended
10 there are conditions the Court could impose that would reasonably assure
11 Defendant's appearance as required and the safety of the community if released.

12 As a preliminary matter, the Court has determined that, while Defendant has
13 made a prima facie showing of some new evidence to support consideration of this
14 Motion in the first instance, Defendant has ultimately failed to demonstrate the
15 new information is material to the issue of detention pursuant to 18 U.S.C. §
16 3142(f). A detention hearing may be reopened if "information exists that was not
17 known to the movant at the time of the hearing and has a material bearing on
18 whether there are conditions of release that will reasonably assure the appearance
19 of such person as required and the safety of any other person and the community."
20 18 U.S.C. § 3142(f).

1 Defendant's acknowledgement of addiction and the availability of inpatient
2 treatment constitute information that may not have been known to Defendant at the
3 time of the previous hearing; however, this information does not constitute
4 information that has a material bearing on Defendant's risks of non-appearance and
5 danger to the community. This Court's prior Order cited several facts that led to
6 that determination, including: Defendant's prior convictions involving dangerous
7 weapons and subsequent rapid recidivism, as well as Defendant's prior violation of
8 a court's protective order. Defendant's acknowledgement of his addiction and the
9 availability of treatment do not have a material bearing on these findings.

10 The Court further notes that Defendant's alleged conduct—that he could not
11 even wait until exiting Cabela's before taking possession of a firearm that another
12 individual had purchased on his behalf—demonstrates incredibly poor volitional
13 control that cannot be overlooked.

14 Therefore, the Court finds that the United States has not established by the
15 required preponderance of evidence an absence of conditions or combination of
16 conditions of release that would reasonably assure Defendant's appearance as
17 required. However, the United States has established by clear and convincing
18 evidence that Defendant poses a present risk to the safety of other persons or the
19 community that cannot be mitigated by conditions or a combination of conditions
20 of release.

1 Accordingly, **IT IS ORDERED:**

2 1. Defendant's Motion to Reopen Detention (**ECF No. 67**) is **DENIED**.

3 2. Defendant shall be held in detention pending disposition of this case
4 or until further order of the Court. Defendant is committed to the custody of the
5 Attorney General for confinement separate, to the extent practicable, from persons
6 awaiting or serving sentences or being held in custody pending appeal. Defendant
7 shall be afforded reasonable opportunity for private consultation with counsel. On
8 order of a court of the United States or on request of an attorney for the United
9 States, the person in charge of the corrections facility in which Defendant is
10 confined shall deliver Defendant to the United States Marshals Service for the
11 purpose of an appearance in connection with a court proceeding.

12 3. If a party desires this Court to reconsider conditions of release
13 because of material and newly discovered circumstances pursuant to 18 U.S.C. §
14 3142(f), that party shall file a maximum four-page motion for reconsideration
15 succinctly stating what circumstances are new, how they are established, and the
16 requested change in conditions of release. The motion shall indicate whether
17 opposing counsel; United States Probation/Pretrial Services; or another party with
18 a substantial interest in the motion object, whether a hearing is desired, and
19 whether a supplemental pretrial services report is requested. If the moving party,
20 after the exercise of due diligence, is unable to determine the position of opposing

1 counsel; United States Probation/Pretrial Services; or another party with a
2 substantial interest in the motion, the moving party may in the alternative
3 document the date; time; and manner of each effort made to determine that party's
4 position. This Court will treat the motion as expedited and submitted without
5 argument, and will set a hearing or issue other orders as may be appropriate.

6 4. If a party desires that another court review this order pursuant to 18
7 U.S.C. § 3145, that party shall promptly file a motion for review before the district
8 judge to whom the case is assigned, as further described in the Detention Order
9 Review Protocol published for the Eastern District of Washington. Both parties
10 shall cooperate to ensure that the motion is promptly determined.

11 5. Defendant is bound over to Judge Mary K. Dimke for further
12 proceedings.

13 **IT IS SO ORDERED.**

14 DATED April 24, 2023.



A handwritten signature in blue ink that reads "Alexander C. Ekstrom".

ALEXANDER C. EKSTROM
UNITED STATES MAGISTRATE JUDGE